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Nos. 99-5, 99-29

MOTION FI

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IN THE

Supreme Court of the United States

UNITED STATES,

Petitioner,

—v.—

ANTONIO MORRISON, *et al.*,

Respondents.

CHRISTY BRZONKALA,

Petitioner,

—v.—

ANTONIO MORRISON, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* AND BRIEF *AMICI CURIAE* FOR LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, AMERICAN JEWISH CONGRESS, AMERICAN JEWISH COMMITTEE, ANTI-DEFAMATION LEAGUE, HADASSAH, NATIONAL COUNCIL OF JEWISH WOMEN, JEWISH COUNCIL ON PUBLIC AFFAIRS, PEOPLE FOR THE AMERICAN WAY AND RUTGERS WOMEN'S RIGHTS LITIGATION CENTER, IN SUPPORT OF PETITIONERS

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MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE*

The American Jewish Committee, American Jewish Congress, Anti-Defamation League, Hadassah, Jewish Council on Public Affairs, Lawyer's Committee for Civil Rights, National Council of Jewish Women, Rutgers Women's Rights Litigation Center and People for the American Way move this Court for leave to file a brief *amici curiae* in support of Petitioners.

Counsel for Petitioners, and the United States, as well as counsel for Respondent Morrison, consented to these parties filing this brief. Counsel for Respondent James Crawford consented to the filing of this brief on behalf of all the amici except People for the American Way, which he described as "anti-Semitic, anti-Christian, anti-Constitution and anti anything that our founding Fathers and Mothers stood for." Counsel for the various parties have been unable to consent to the filing by Rutgers Women's Rights Litigation Center.

The agencies seeking to file this brief all have long histories of supporting a vigorous federal role in the protection of the civil rights of all Americans. This brief, which focuses on congressional power under § 5 of the Fourteenth Amendment, reflects these commitments, and the familiarity of *amici* with the pertinent legal issues.

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INTEREST OF AMICI*

The Lawyers' Committee for Civil Rights Under Law ("Lawyer's Committee"), established in 1963 at the request of President Kennedy to help assure civil rights to all Americans, is a non-profit private corporation that has enlisted the services of thousands of members of the private bar in cases involving voting, education (including school desegregation), employment, housing, municipal services, the administration of justice and law enforcement.

The American Jewish Congress is an organization of American Jews founded in 1918 to protect the civil, economic, political and religious rights of American Jews and all Americans. It believes that Congress has broad authority to protect the fundamental liberty of all Americans to be free of bias-motivated assaults.**

Summary of Argument

This brief is submitted on behalf of several organizations in support of the civil rights remedy of the Violence Against Women Act of 1994 (VAWA), 42 U.S.C. § 13981(c), which provides the victims of violent crimes motivated by gender with a right of recovery against their attackers. This brief demonstrates that Congress properly enacted the VAWA civil rights remedy as an exercise of its power under Section 5 of the Fourteenth Amendment to remedy State violations of the Equal Protection Clause.***

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* This brief was authored in its entirety by the *amici curiae* and its counsel, and no person or entity other than the *amici curiae* or its counsel made a monetary contribution with respect to its preparation or submission.

** The interest of additional *amici* is set forth in Appendix A hereto.

*** The signatories to this brief also endorse the position, set forth in Petitioner's brief, that the Act is a valid exercise of Congress' power under the Commerce Clause.

The court below erred in concluding that the VAWA civil rights provision was directed purely against private conduct — rather than State constitutional violations — and thus fell outside Congress' Fourteenth Amendment power. The Fourth Circuit ignored Congressional findings that the States purposefully discriminate against women victims of gender-motivated violence in the operation of their criminal justice systems. This error fatally infected the lower court's decision.

The VAWA civil rights remedy did not create or expand any substantive constitutional right. Rather, it represents remedial action by Congress based on findings that the States discriminate against women in the operation of their criminal justice systems, thereby violating the Equal Protection Clause.

Where, as here, Congress has properly found a State violation of a substantive protection of the Fourteenth Amendment, this Court has long recognized that the legislature has broadly sweeping authority to enact remedial measures congruent with and proportional to that violation. This Court in *City of Boerne* v. *Flores*, 521 U.S. 507 (1997), emphasized that — in order to remedy or prevent constitutional violations — Congress can choose to prohibit or penalize conduct that is not itself violative of the Constitution.

Here Congress did not remotely test the boundaries of its Section 5 enforcement power by addressing State practices — such as voter literacy tests — that are *not* themselves prohibited by the Fourteenth Amendment. Rather, Congress sought to provide a remedy addressing governmental action that is *unquestionably* a Fourteenth Amendment violation: purposeful discrimination against women by the States.

The Fourth Circuit's failure to understand and account for the congressional findings underlying the VAWA civil rights remedy led the lower court to misapply the "state action" holding of the *Civil Rights Cases*, 109 U.S. 3 (1883). The *Civil Rights Cases* held that Congress lacked the power to

reach private conduct in the absence of a state constitutional violation. Here, by contrast, Congress found that the States *have* violated the rights of women by engaging in purposeful discrimination against them in the operation of their criminal justice systems. In this context, the "state action" argument at the heart of the lower court's decision is simply irrelevant.

The only issues properly before this Court are whether: (1) Congress had a reasonable basis for finding purposeful discrimination by the states; and (2) Congress' chosen remedy, *i.e.*, permitting a private cause of action by victims of gender-motivated violence against their attackers, constitutes a reasonable exercise of Congress' enforcement power. Both of these issues should be resolved in Congress' favor.

First, Congress' findings of discriminatory conduct here are as strong as those at issue in cases such as *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966); *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966); and *City of Rome* v. *United States*, 446 U.S. 156 (1980). In those cases, this Court affirmed Congress' conclusion that States had unconstitutionally discriminated against African Americans seeking to exercise their right to vote, permitting a broad range of highly intrusive federal regulations of local electoral processes. Here, Congress made similar, and amply supported, findings that the States purposely discriminate against women who are victims of gender based violence in the operation of their criminal justice systems, thereby justifying remedial action.

Second, the means Congress chose to remedy the State constitutional violation — *i.e.*, permitting an action against those who commit violent, gender-based offenses against women — is clearly within its Section 5 powers. No constitutional provision nor any decision of this Court excludes private parties from the scope of Congress' remedial powers. To the contrary, this Court ruled in *United States* v. *Guest*, 383 U.S. 745 (1966), that Congress *may* reach the conduct of private persons to remedy a Fourteenth Amendment violation. The Court

below misread *Guest* to stand for the proposition that Congress' remedial powers may extend to private persons *only* when such persons are themselves responsible for the violation. The salient question before this Court, however, is not whether the defendants were personally responsible for the State of Virginia's constitutional violation, but rather whether Congress has the remedial power to reach felons in order to remedy the State's equal protection violation. The answer to this question is yes.

This Court has consistently held that Congress may employ any means appropriate — *i.e.*, congruent and proportional and not otherwise prohibited by the Constitution — to remedy a Fourteenth Amendment violation. There is no barrier to Congress' choice of remedy here, *i.e.*, supplementing the States' constitutionally defective criminal justice systems with a private cause of action against those who commit gender-motivated crimes.

Far from over-stepping its constitutional bounds in enacting the VAWA civil rights remedy, Congress chose a means of addressing the States' equal protection failings that was far less intrusive than other remedial options available to it. Congress did *not* broadly convert crimes against women into federal crimes nor coercively withhold federal funds from States that failed to enact federally prescribed statutes.

After finding that the States discriminate in the enforcement of their laws respecting gender-motivated violence, Congress enacted an entirely congruent and proportional remedy: permitting the victims of such crimes to recover from their assailants. This Court should uphold Congress' proper exercise of its Fourteenth Amendment enforcement power.

POINT I

CONGRESS FOUND A PERVASIVE EQUAL PROTECTION VIOLATION

After an extensive legislative fact-finding process, Congress found "overwhelming evidence that gender bias permeates [state] court system[s]," S. Rep. No. 102-197 (1991) at 43-44, and that this "existing bias and discrimination in the criminal justice system often deprives victims of crimes of violence motivated by gender of equal protection of the laws and the redress to which they are entitled." H. Conf. Rep. No. 103-711 (1994) at 385. Enacted against a backdrop of compelling historical and continuing evidence of gender discrimination by the states, the VAWA civil rights remedy, 42 U.S.C. § 13981(c),* is tailored to address a crucial element of this violation: state laws and state law enforcement officials that have systematically under-deterred and under-prosecuted gender-motivated violent felons.

Evidence of pervasive gender discrimination by States against victims of domestic violence and rape led to passage of the VAWA civil rights remedy. *See infra* Section A. While "judicial deference" is owed to any Congressional finding that a right clearly protected under the Fourteenth Amendment has been violated, *see Boerne*, 521 U.S. at 531-32, the record of state discrimination here is detailed and extensive and compares favorably with every other case in which this Court has reviewed laws exercising Congress' Section 5 power. *See infra* Section B.

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* The VAWA civil rights remedy creates a private damages cause of action for a victim of a violent crime who can demonstrate that the crime constituted a felony and that it was motivated by gender.

A. Congress Found that State Criminal Justice Systems Discriminate Against Women in Affording Protection from Violent Injury and Sexual Abuse.

Congress found that "victims of gender-motivated violence have a right to equal protection of the laws, including a system of justice that is unaffected by bias or discrimination and that, at every relevant stage, treats such crimes as seriously as others" and that "a Federal civil rights action as specified in this section is necessary to guarantee equal protection of the laws." S. Rep. No. 103-138, at 29 (1993). The evidence compiled in the detailed inquiries of three Congresses amply supports these findings.

1. History of pervasive legal subjugation and bias

For much of American history, women were explicitly denied by the laws of every state such essential civil rights as suffrage, property ownership, and freedom from domestic violence. State common law explicitly permitted men to batter, whip and rape their wives. In the 1870s, most states formally rejected the "right of chastisement" — the legal right of a husband to beat his wife — yet courts in practice continued to deny protection to women who suffered violent domestic abuse. *See, e.g., State* v. *Rhodes*, 61 N.C. (Phil. Law) 453, 454 (1868) (declining to affirm based on a right of chastisement, yet upholding decision that husband was not guilty of battery for whipping his wife because "the evil of publicity would be greater than the evil involved in the trifles complained of"); Reva B. Siegel, *"The Rule of Love": Wife Beating as Prerogative and Privacy*, 105 Yale L.J. 2117, 2129-2164 (1996) (describing formal repudiation of right of chastisement in 1870s and subsequent denial of protection to battered wives) ("Siegel").

Explicit discrimination was maintained in both criminal and private law: "Regardless of whether a husband beat, choked, stabbed, or shot his wife, all courts reviewing [intentional

tort] claims initially rejected them, reasoning that spouses could-not sue each other in tort." Siegel at 2163. As Congress explicitly noted:

- The common law "rule of thumb," intended to provide some measure of protection to women from brutal bludgeonings, barred a husband from "restraining a wife of her liberty by chastisement with a stick thicker than a man's thumb." S. Rep. No. 103-138, at 41.
- "It was not until a century ago that the laws began to change to revoke a man's legal right to beat his wife. . . . Despite the positive changes in the law of the last century, *the criminal justice system continues to ignore or condone battering.*" *Examining the Rise of Violence Against Women in the State of Maine and Other Rural Areas*, Hearing Before the Senate Committee on the Judiciary, 103d Cong., 1st Sess., at 2 (Sen. Cohen) (emphasis added).
- "Over 300 years ago, English jurist Matthew Hale cautioned that rape is a charge 'easily to be made and hard to be proved, and harder to be defended by the party accused, tho' ever so innocent.' This officially expressed skepticism . . . took the form of special rules requiring victims to produce corroborating witnesses, to show 'prompt complaint,' or to demonstrate 'utmost resistance' to the attack. In the late 1970s, many states began to abolish those rules. Unfortunately, the spirit of Sir Hale's words lives on in laws, practices and stereotypes." S. Rep. No. 102-197, at 45 (citations omitted).

2. Continuing de jure discrimination by the States

Congress recognized that vestiges of this history of explicit, unequal treatment under law persist in the substantive laws of a large number of states, most egregiously in laws limiting protection to victims of spousal rape. *See* S. Rep. No. 102-197, at 45 n.50. Congress found that discriminatory laws

presently exist in various forms: "a few states still fail to recognize rape of a spouse as a criminal act; other states do not prosecute husbands for rape unless a wife suffers 'additional degrees of violence like kidnapping or being threatened with a weapon;' others classify rape of a spouse as a less serious crime with lesser penalties." S. Rep. No. 103-138, at 42 (quoting Diana Russell, *Rape in Marriage* 21-23 (1990)). For example:

- *Lesser penalties for marital rape*: in Arizona, forcible spousal rape may be a misdemeanor, while non-forcible, non-spousal rape is a serious felony, Ariz. Rev. Stat. Ann. 13-1406.01; in Virginia, a spousal rapist's penalty may be limited to mandatory counseling, whereas a stranger rapist faces a minimum penalty of five years incarceration, Va. Code 18.2-67.2:1B; 18.2-61C; in West Virginia, the maximum penalty facing a spousal rapist is less than or equal to the minimum penalty facing a stranger rapist, W. Va. Code § 61-8B-3;

- *Spousal immunities:* in South Carolina, spousal immunities can render a husband not liable for rape unless committed with "aggravated force," S.C. Code Ann. 16-3-658, 16-3-615; in Maryland, spouses are immune from prosecution for certain first and second degree rapes (*e.g.*, a spouse may not be prosecuted for first degree rape based on a threat of violence), Md. Ann. Art. 27 sec. 464D(c); in Mississippi and Louisiana, a spouse is not liable for non-forcible rape, Miss. Code Ann. 97-3-99, La. R.S. 4:43(A); in Wyoming, a spouse is immune from certain sexual assault offenses including rape of a victim with mental illness, Wy. Stat. Ann. 6-2-302 (iv).

- *Interspousal tort immunity*: many states prevent or limit recovery by battered women seeking to recover intentional tort damages, Leonard Karp & Cheryl L. Karp, *Domestic Torts: Family Violence, Conflict and Sexual Abuse* § 1.16 (1995). The doctrine of interspousal tort immunity "survived well into the twentieth century, and today still bars

claims of intentional torts, either in whole or in part, in nearly a fifth of the states." Siegel at 2163.

- *Discriminatory complaint requirements*: so-called "prompt complaint" requirements in some states bar rape prosecutions against spouses where a complaint is not brought within 30 days, S.C. Code Ann. 16-3-615; Ill. Comp. Stat. Ann. 5/12-18(c), or within a year, Cal. Penal Code § 262. *See also* S. Rep. No. 102-197, at 45 (noting that courts tend to place great emphasis on the speed with which rape charges are brought, thereby "reviving in practice the 'prompt complaint rule' ").

- *Discriminatory trial standards*: many jurisdictions adhere to the common law "fresh complaint rule" in rape trials, which creates a rebuttable presumption against the credibility of rape complaints not filed soon after the alleged assault. Morrison Torrey, *When Will We Be Believed? Rape Myths and the Idea of a Fair Trial in Rape Prosecutions*, 24 U.C. Davis. L. Rev. 1013, 1041-43 (1991). Moreover, in an echo of Sir Hale's dictum, pattern jury instructions used in some state courts diminish victim credibility by pointedly reminding juries of the possibility of false accusations of rape. *Id.* at 1046. *See* S. Rep. No. 102-197, at 44.

3. Discriminatory enforcement of state law

While states have gradually removed most *de jure* discrimination against women victims, pervasively discriminatory enforcement practices exist at *every* level of state criminal justice systems.

Police. Congress found that police officers display a widespread reluctance to "interfere" in matters of domestic violence and that this discriminatory refusal to enforce the law, in turn, feeds a reluctance on the part of victims even to report violations.

- "A 1989 study in Washington, DC, found that in over 85% of the family violence cases where a woman was found bleeding from wounds, police did not arrest her abuser." S. Rep. No. 103-138, at 41.
- Victims related their experience of law enforcement indifference and intransigence to Congress: "Not only was I greatly abused that day by my husband, but I was also abused by the system. Not one person has said what happened to me was an assault or that I could press charges or that I could have a protective order, not one person." *Examining the Rise of Violence Against Women in the State of Maine and Other Rural Areas*, Hearing Before the Senate Committee on the Judiciary, 103d Cong., 1st Sess., at 15 (Nov. 2, 1993) (statement of Lisa).
- "In cases where a comparable assault by a stranger on the street would lead to a lengthy jail term, a similar assault by a spouse will result neither in arrest nor in prosecution." S. Rep. No. 103-138, at 41.
- Roughly one out of four rape victims surveyed who chose not to report the rape did so because "they thought the police would be inefficient, ineffective, or insensitive." *Crimes of Violence Motivated by Gender*, Hearing Before the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, 103d Cong., 1st Sess., at 118 (Nov. 16, 1993) (statement of Fund for the Feminist Majority).

Prosecutors. Congress found that violent crimes against women are systematically under-prosecuted compared to other violent crimes and that prosecutors tend to bring charges carrying lower penalties in cases of acquaintance rape or domestic violence.

- Prosecutors routinely do not file acquaintance-rape cases, reasoning that convictions are unlikely "because the victim and the perpetrator know each other." S. Rep. No. 102-197, at 47.

- "[V]ictims of rape are often unable to find either justice or protection in the criminal justice system. From the initial report to the police through prosecution, trial, and sentencing, crimes against women are often treated differently and less seriously than other crimes. Police may refuse to take reports; prosecutors may encourage defendants to plead to minor offenses; judges may rule against victims on evidentiary matters." S. Rep. No. 103-138, at 42.
- "Judges, juries, prosecutors and police officers question the credibility of rape victims based on a number of circumstantial matters that are irrelevant in determining whether a criminal act occurred. For example, they may require a woman . . . to take a lie detector test, to not have waited more than 48 hours before reporting the incident, to not have engaged in premarital or extramarital sex, to have had no previous social contact with her assailant, and not to have reached the location of the rape voluntarily." *Id.* at 45-46.

Courts. Congress found that widespread gender bias among judges contributes to the judicial system's failure to afford women equal protection of the laws.

- Numerous state task forces "identified widespread gender bias in the courts, particularly in cases of rape and domestic violence." *Id.* at 44; *see also id.* at 49 n.52 (citing state gender bias task force reports); S. Rep. No. 102-197, at 43 n.40 (same).
- "Studies from a number of States report 'pervasive suspicion of rape victims' credibility,' infecting the criminal justice system at every step of the way. Judges and juries expect more corroboration in sexual assault cases than in other cases of a similar class even where there is no such legal requirement." S. Rep. No. 103-138, at 45.
- "[M]any judges and court personnel ask battered women what they did to provoke the violence. Several state task

forces have cited judges who disbelieve female petitioners unless there is visible evidence of severe physical injury, trivialize domestic violence complaints by their demeaning and sexist comments ('Let's kiss and make up and get out of my court'), and tell the victim seeking relief in criminal court that this is a domestic problem that belongs in family court." *Women and Violence*, Hearing Before the Senate Committee on the Judiciary, 101st Cong., 2d Sess., at 65 (June 20, 1990) (statement of NOW Legal Defense and Education Fund).

- "The New York Task Force found that in some communities judges shunt victims back and forth between police and family court until they give up seeking protection." *Id.*

4. Statistics reflecting the effect of bias and unequal protection

Finally, Congress properly assessed the harm flowing from widespread discrimination by amassing telling empirical and statistical evidence. To wit:

- "[R]ape reporting and prosecution rates have not changed substantially with law reform." S. Rep. No. 102-197, at 45 n.47.
- "[O]ver 60 percent of rape reports do not result in arrests." S. Rep. No. 103-138, at 42.
- "Studies indicate that, despite decades of legal reform, there has been no significant increase in . . . rape arrest rates." *Id.* at 45.
- A rape survivor has a 5% chance of seeing her attacker convicted. S. Rep. No. 102-197, at 44.
- A rape case is "nearly 40 percent more likely to be dismissed than a robbery case." S. Rep. No. 103-138, at 42.

- "Three out of four women will be the victim of a victim of violent crime sometime during their life." S. Rep. No. 103-138, at 38.
- One-third of all incidents of domestic violence would be classified as felony rape, robbery or aggravated assault. S. Rep. No. 102-197, at 38.
- The remaining two-thirds involve bodily injury at least as serious as the injury inflicted in 90% of all robberies and aggravated assaults. *Id.*
- One-third of all women murdered in 1990 were killed by either their present or former husbands or boyfriends. *Id.*
- "Almost one quarter of convicted rapists never go to prison." S. Rep. No. 103-138, at 38.

* * *

Harmful and foundationless gender discrimination, like that found by Congress here, violates the Equal Protection Clause. *See, e.g., United States* v. *Virginia*, 518 U.S. 515, 532 (1996) ("[This] Court has repeatedly recognized that neither federal nor state government acts compatibly with the equal protection principle when a law or official policy denies to women, simply because they are women, full citizenship stature.").

B. Congress' Findings of a Fourteenth Amendment Violation Clearly Satisfy this Court's Deferential Standard of Review.

Congress has broad authority both to *find* Fourteenth Amendment violations and to fashion suitable remedies. *City of Boerne* v. *Flores*, 521 U.S. 507, 525-28 (1997). And, where Congress does not seek to expand the scope of substantive constitutional rights, but rather acts to remedy a core equal protection violation, its findings are subject to broad judicial deference. *Boerne*, 521 U.S. at 531 (such deference "is based *not* on the state of the legislative record, but 'on due regard

for the decision of the body *constitutionally appointed to decide*.' ") (quoting *Oregon* v. *Mitchell*, 400 U.S. 112, 207 (1970)) (emphasis added). Thus, deference to Congress' findings flows from separation of powers principles. *Id.* at 535 ("When Congress acts within its sphere of power and responsibilities, it has not just the right but the duty to make its own informed judgment on the meaning and force of the Constitution.").

In light of Congress' role as the body "constitutionally appointed" to enforce the rights guaranteed under the Fourteenth Amendment, courts do not second-guess legislative findings of a core constitutional violation, but ask only whether Congress had a "factual basis" for acting. *Boerne*, 512 U.S. at 526-27 (citing *Katzenbach* v. *Morgan*, 384 U.S. 641, 656); *City of Richmond* v. *J.A. Croson Co.*, 488 U.S. 469, 490 (1989) (Congress' section 5 enforcement power "include[s] the power to define situations which *Congress* determines threaten principles of equality and to enact prophylactic rules [under Section 5] to deal with those situations."); *see also Metro Broadcasting, Inc.* v. *FCC*, 497 U.S. 547, 605 (1990) (O'Connor, J., dissenting) ("Congress has considerable latitude . . . when it exercises its unique [Section 5] remedial powers").

Where, as here, Congress acts against an incontrovertible historical backdrop of "widespread and persisting" discrimination, courts must defer to its conclusion that purposeful discrimination would persist absent Congressional action. *See Boerne*, 521 U.S. at 526-27, 532-33.

Far from granting appropriate deference to Congress' finding of widespread discrimination against women in state criminal justice systems, the court below substituted its own independent judgment for that of Congress. *See* Opinion Below, 169 F.3d 820, 883-87 (4th Cir. 1999). The Fourth Circuit's demanding scrutiny of Congress' findings is directly contrary to this Court's teaching.

Application of the "factual basis" standard establishes that Congress acted well within its constitutional authority in rendering its findings here. Indeed, the record supporting the VAWA civil rights remedy is strikingly analogous to that which supported the provisions of the Voting Rights Act of 1965 reviewed in *South Carolina* v. *Katzenbach*, 383 U.S. 301, 308-15 (1966). There Congress found: (a) a long history of violent, *de jure* discrimination against African Americans under unequal laws; (b) the replacement of explicit legal discrimination with discriminatory enforcement of seemingly equal laws; (c) a "widespread pattern" of discrimination by biased state actors at every level of government; and (d) statistical evidence suggesting that despite legal reform efforts, inequality persisted in fact. *Id.* at 312-315.

So too here, Congress explicitly found that a period of explicit legal denial of women's rights has been followed by a period of systematic under-protection of the rights of women due to a widespread pattern of biased and discriminatory state enforcement. Furthermore, statistical and empirical findings also indicated that legal reform efforts have so far failed to result in real improvement in the treatment of women in the States' criminal justice systems. *See, e.g.*, S. Rep. No. 103-138, at 45.

Although the plenary findings accompanying VAWA match those reviewed in *South Carolina*, subsequent precedents establish that such extensive findings as made here are not required of Congress. The voting rights cases after *South Carolina* upheld legislative findings on a deferential, rational review standard that certainly did not require — as the Court below would — detailed, particularized showings of purposeful state discrimination. *Boerne*, 521 U.S. at 526-27.*

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* In *Morgan*, Congress offered no specific findings of invidious discrimination against Puerto Rican voters subject to voter literacy tests, yet this Court deferred to Congress' judgment regarding the existence of such discriminatory animus. *See* 384 U.S. at 656 ("It is enough that we perceive a basis upon which Congress might predicate a judgment that the

Apart from ignoring the facts found by Congress, the lower court majority likewise all but ignored the facts alleged by the plaintiff in this case. *Compare Brzonkala*, 169 F.3d at 906-08 (Motz, J., dissenting). The Fourth Circuit's silence as to Ms. Brzonkala's allegations is notable, as her allegations echo Congress' findings as to the discriminatory governmental treatment of victims of gender-based crimes.

Plaintiff alleges she was forcibly raped by two men in a dormitory of her state university. When she reported these crimes to university officials they did not report the rapes to the police (sexual assault is the *only* violent felony that the university authorities do not automatically report to the police). After two, onerous, duplicative hearings, the university found one of the rapists guilty of abusive conduct and sentenced him to a two semester suspension. This he appealed successfully: the university set aside the sanction, finding that, although the evidence showed a violation of the university's abusive conduct policy, a one year suspension was "excessive." Thus, the rapist returned to school and rejoined its football team in the next term, while Ms. Brzonkala withdrew, fearing for her physical safety. The facts alleged underscore Congress' conclusion that the States deliberately underenforce criminal laws prohibiting rape and other gender-based felonies — thus requiring a federal remedial response.

* * *

application of New York's English literacy requirement . . . constituted an invidious discrimination in violation of the Equal Protection Clause.").

The record here is clearly distinguishable from that which this Court found lacking in its review of the Religious Freedom Restoration Act (RFRA). *Boerne, supra*. There the Court concluded that Congress had not adduced evidence that the States had intentionally burdened Free Exercise rights, as this Court held was required. Here, by contrast, there is ample evidence of explicit and invidious, ongoing bias in the operation of state criminal justice systems. *Compare also Oregon* v. *Mitchell*, 400 U.S. 112 (1970) (invalidating federal statute prohibiting state 21-year-old vote requirements where Congress had not found that such requirements were a mechanism for prohibited discrimination).

Where Congress does *not* expand the substantive reach of the Fourteenth Amendment, but rather acts within its constitutionally appointed role in finding a violation of an established equal protection right, deference is owed to its findings. Here, Congress responded to intentional state discrimination against women: it found that states treat violent crimes against women — notably rape and domestic abuse — "less seriously than comparable crimes affecting men." S. Rep. No. 103-138, at 49. Congress also sought to remedy invidious discrimination caused by a historically rooted gender bias that it found to "permeate[ ]" states' criminal justice systems and to "often deprive[ ] victims of gender-motivated crimes of equal protection of the laws." S. Rep. No. 102-197 at 44; S. Rep. No. 103-138, at 29. This Court should not repudiate Congress' carefully considered and amply supported findings of pervasive state discrimination against the victims of gender-motivated violence.

POINT II

THE VAWA CIVIL RIGHTS REMEDY IS A PROPER EXERCISE OF CONGRESS' REMEDIAL POWER

Where, as here, Congress has properly found the States to have violated the Equal Protection Clause of the Fourteenth Amendment, Section 5 grants the legislature "broad[ly] sweep[ing]' " powers to "make . . . effective" Section 1's substantive protections. *City of Boerne* v. *Flores*, 521 U.S. 507 (1997). As this Court recently reiterated:

> Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not pro-

hibited, is brought within the domain of congressional power.

— *Boerne*, 521 U.S. at 517, (quoting *Ex parte Virginia*, 100 U.S. 339, 345-46 (1879)).

As explained in *South Carolina* v. *Katzenbach*, 383 U.S. 301, 326 (1966), the deferential "appropriateness" test for judicial review of Congress' exercise of its 14th Amendment enforcement power is essentially the same rational basis standard applied "in all cases concerning the [exercise of the] express powers of Congress with relation to the reserved powers of the States." *Id.* (citing *M'Culloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316, 421 (1819)).

Thus, like any other exercise of an enumerated power granted to the Congress, a legislative act passed pursuant to Section 5 is presumed valid. And — absent the existence of some affirmative limitation upon Congress authority (*e.g.*, derived from some other portion of the Constitution) — any remedy that is reasonably and appropriately calculated to remedy or prevent a violation of the Fourteenth Amendment should be upheld. *Morgan*, 384 U.S. at 651 (Section 5 is a "positive grant of legislative power authorizing Congress to exercise its discretion in determining whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment.").

In fashioning an "appropriate" remedy, Congress is not limited to prohibiting or penalizing conduct that actually violates the substantive guarantees of the Amendment. Rather, "[l]egislation which deters or remedies constitutional violations can fall within the sweep of Congress' enforcement power even if in the process it prohibits conduct which is not itself unconstitutional". *Boerne*, 521 U.S. at 518. Congress may impose broad remedies — *e.g.*, proscribing conduct that is *not* violative of the Constitution — even if it thereby works significant "intru[sions] into [the] 'legislative spheres of

autonomy previously reserved to the States' ". *Id.* (quoting *Fitzpatrick* v. *Bitzer*, 427 U.S. 445, 455 (1976)).

This Court has upheld numerous congressional enactments that restricted, or even proscribed, otherwise constitutional state practices and activities upon a congressional finding that such practices could cause or amplify the effects of constitutional violations by the States. *See, e.g., City of Rome* v. *United States*, 446 U.S. 156 (1980) (upholding seven year extension upon Voting Rights Act's requirement for preclearance by certain jurisdictions of *any* change to a "standard, practice, or procedure with respect to voting" in order to enforce Fifteenth Amendment protections); *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966) (upholding ban on literacy tests applied to persons from Puerto Rico based on congressional finding that such tests posed risk of contributing to Fourteenth and Fifteenth Amendment violations); *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966) (upholding numerous Voting Rights Act provisions under Congress' authority to impose prophylactic remedies to prevent constitutional violations).

While Congress' Fourteenth Amendment enforcement authority is broad and sweeping, it is not boundless. As explained (Point I, *supra*), the Fourteenth Amendment reserves to the courts the authority to discern the substantive scope of the rights guaranteed by the Amendment. And Congress may not employ its enforcement power to increase or modify the scope of those constitutional rights. *Boerne*, 521 U.S. at 519. Even here, however, the design of the Fourteenth Amendment mandates substantial judicial deference to the legislative judgment of Congress. As this Court recently explained, "the line between measures that remedy or prevent unconstitutional actions and measures that make a substantive change in the governing law is not easy to discern, and Congress must have *wide latitude* in determining where it lies." *Id.* at 519-20 (emphasis added).

In light of the deference due Congress in its "constitutionally appointed", *id.* at 531, role as the primary enforcer of the Equal Protection and Due Process guarantees, a reviewing court must sustain a Section 5 remedy so long as there is a showing of "congruence and proportionality between the injury to be prevented or remedied" — *i.e.*, the threatened or actual State violation — "and the [legislative] means adopted to that end." *Boerne*, 521 U.S. at 519; *accord College Savings Bank* v. *Florida Prepaid Postsecondary Educ. Expense Bd.*, 119 S.Ct. 2219, 2224 (1999). *Only* if such a remedial "connection" is wholly lacking should a court conclude that a statute is defectively "substantive in operation and effect." *Boerne*, 512 U.S. at 519. The VAWA civil rights remedy was carefully tailored to satisfy this standard.

A. The VAWA Civil Rights Remedy is Both Congruent With and Proportional to the Constitutional Violation Found by Congress

The VAWA civil rights remedy easily satisfies the congruence and proportionality standard set forth in *Boerne*.

First, the *congruence* between the Equal Protection violation — *i.e.*, the States' purposeful and ongoing discrimination against female victims of gender-based violence in their criminal justice systems — and the legislative remedy — *i.e.*, permitting a civil damages recovery against the felons who commit such violence — is manifest. Indeed, the linkage could hardly be more direct. The VAWA civil rights remedy provides the persons most directly affected by the State violation a right that appropriately compensates them for dire injuries they suffer.

It is of no constitutional moment that the felons who commit such criminal acts are — while responsible for their own criminal behavior — not personally responsible for the States' equal protection violations. For Congress has ample discretion under Section 5 to allow suits against those who commit acts of gender based violence as a supplement to state

criminal enforcement that Congress found constitutionally defective.

Despite the close linkage between the congressional finding of a violation and the legislature's prescription of a civil rights remedy, the Fourth Circuit opined that the applicable congruence standard was unsatisfied. The lower court's conclusion derived from a fundamental error that we have already addressed, *i.e.*, the Fourth Circuit's conclusion that Congress had *not* actually found a Fourteenth Amendment violation by the States. Had the court below properly credited Congress' findings with respect to the States' ongoing and systematic violation of the rights of women victims of gender-based violence, a finding of congruence would necessarily have followed.

Second, Congress deliberately fashioned the VAWA civil rights remedy to be *proportional* to the scope and parameters of the States' equal protection violation. Thus, the statute's reach is limited solely to cases involving the most serious of violent acts directed against women, *i.e.*, criminal conduct that constitutes a felony under applicable federal or state law. *See* 42 U.S.C. § 13981(d)(2) (defining "crime of violence" to include a state or federal "felony against the person" or state or federal felony that "presents a serious risk of physical injury to another").

Furthermore, a VAWA civil rights plaintiff must prove that the crime she has suffered was motivated by gender animus, thus ensuring that the remedy's reach is restricted to that set of crimes — such as rape — that Congress found the States to systematically under-prosecute and invidiously under-enforce. *See* 42 U.S.C. § 13981(d)(1) (defining "crime of violence motivated by gender" to include "crime of violence committed because of gender or on the basis of gender, and due, at least in part, to an animus based on the victim's gender").

The Fourth Circuit took Congress to task for not limiting the scope of its civil rights remedy even *further*, *e.g.*, by

employing the sort of geographical and/or temporal restrictions included in certain provisions of the Voting Rights Act. 169 F.3d at 887. The Fourth Circuit's critique of Congress' enforcement scheme is, however, of no constitutional moment. For while Congress might have chosen even further to delimit the scope of the VAWA civil rights remedy, it was not required to do so. As this Court recently explained, there is simply no general requirement that Section 5 legislation contain "termination dates, geographic restrictions or egregious predicates." *Boerne*, 521 U.S. at 533.

Such limitations on the exercise of Congress' remedial powers will be necessary if ever only where a "congressional enactment pervasively prohibits constitutional state action in an effort to remedy or prevent unconstitutional state action". *Id*. The Voting Rights Act and the RFRA statute (which the *Boerne* Court noted intruded upon the administration of local zoning rules and imposed substantial litigation burdens on states and localities, 521 U.S. at 534) are the sorts of statutes that are so intrusive upon the administrative and regulatory authority of the States as potentially to require such tailoring.

The VAWA civil rights remedy is certainly *not* such a regulation, as the provision imposes virtually no burdens or intrusions upon state or local government. Indeed, as we discuss in further detail below (*see infra* Point III), the VAWA civil rights remedy was designed specifically and deliberately to *avoid* such interference. The statute imposes no intrusion or burden upon the States' law enforcement activities. Likewise, the VAWA civil rights remedy was specifically designed to prevent intrusions upon the States' role in adjudicating divorce and other domestic relations disputes by preventing the removal of such actions to federal court in connection with a VAWA civil action. *See* 42 U.S.C. § 13981(e)(4).

B. Congress Has the Power to Reach the Criminal Conduct of Private Persons to Remedy States' Constitutionally Violative Administration of Their Law Enforcement Responsibilities

As this Court reiterated in *Boerne*, Congress has "sweeping" authority to employ any "appropriate" means to remedy a state violation of the Fourteenth Amendment. *See* 521 U.S. 517. Nonetheless, the Fourth Circuit concluded that this broad congressional enforcement authority is dramatically limited where private persons are concerned. Thus, the lower court stated that Congress is generally lacking in Section 5 authority to "regulate private conduct," 169 F.3d at 869, even where (as here) Congress has found that such criminal conduct is inextricably connected to the States' ongoing violation of the equal protection rights of women.

In fact, far from holding that the criminal conduct of private persons is outside the scope of Congress' expansive remedial power, this Court has held to the precise contrary. In *United States* v. *Guest*, this Court upheld an indictment seeking to impose a criminal penalty upon private persons in order to remedy a violation of the Fourteenth Amendment. 383 U.S. 745 (1966). The Court in *Guest* apparently considered the proposition that Congress is empowered by Section 5 to impose criminal — let alone a civil — remedies upon private persons so uncontroversial that the matter was not even discussed in the opinion.

The focus of *Guest*'s analysis was upon a different question: whether — and under what circumstances — a private person might himself actually *commit* a Fourteenth Amendment violation. This additional question arose in *Guest* because the government's criminal charges were premised on an allegation that the defendant private persons had — acting in concert with certain state authorities — worked the Section 1 violation that formed the constitutional gravamen of the charges. *Guest* upheld the government's indictment, reasoning that the charges alleged sufficient state involvement in the

underlying equal protection violation to satisfy the state action requirement of the Fourteenth Amendment. The Opinion of the Court in *Guest* noted, however, that it was leaving to be answered on another day the question of whether the Fourteenth Amendment permits Congress or the Courts to reach instances in which the government was less intimately involved in a putative constitutional violation. *See id.* at 756.

Contrary to suggestions in the Fourth Circuit's decision, this case does not require the Court to revisit the question it left deliberately open in *Guest*, because, unlike in that case, the constitutional violations that form the Section 5 basis for the VAWA civil rights remedy are not committed by private persons. Rather, the violations that Congress found to pervade the investigation and enforcement of criminal laws with respect to gender motivated violence are *entirely* attributable to state actors, *i.e.*, the police, prosecutors and judges that (discriminatorily) administer their States' criminal justice systems.

Thus, in contrast to *Guest*, Congress did *not* find that the criminals who are made liable in damages under the VAWA civil rights remedy *commit* Fourteenth Amendment violations in the name of the State. It *did* find, however, that it was appropriate to impose damages liability upon private felons in order to *remedy* the effects of the States' constitutional failings, one of which is to foster more criminal violence against women than would otherwise occur. And the *Guest* decision made it clear — had it ever been ambiguous or uncertain before — that private persons who engage in criminal acts are not immune from the broad reach of Congress' Fourteenth Amendment enforcement powers, where holding them civilly liable is appropriate to remedy the consequences of state discrimination.

C. The VAWA Civil Rights Remedy Fully Satisfies the Fourteenth Amendment's State Action Requirement.

The VAWA civil rights remedy is premised on a congressional finding that the States are responsible for an ongoing

violation of the Fourteenth Amendment equal protection rights of women victims of gender motivated violence. Despite this finding, the Fourth Circuit concluded that two precedents in which this Court first explored the nature and scope of the Fourteenth Amendment's state action requirement — *United States* v. *Harris*, 106 U.S. 629 (1883) and the *Civil Rights Cases*, 109 U.S. 3 (1883) — are somehow fatal to the constitutionality of the VAWA civil rights remedy. In fact, those portions of the holdings in *Harris* and the *Civil Rights Cases* that remain good law are entirely consistent with Congress' exercise of its enforcement power to enact the VAWA civil rights remedy.

In *Harris*, this Court held unconstitutional Section 2 of the Civil Rights Act of 1871, which forbade private conspiracies to deny persons equal protection of the laws, absent any underlying finding — like that made in enacting VAWA — that the States had failed in their constitutional responsibilities to protect African Americans or other minorities against such private criminal conduct. *See, e.g.*, 106 U.S. at 640 (noting that Section 2 "is directed *exclusively* against the action of private persons, without reference to the laws of the States, or their administration by the officers") (emphasis added). And, in the *Civil Rights Cases*, this Court nullified the public accommodations provisions of the 1875 Civil Rights Act, which created equal rights of access to privately owned inns, public conveyances and places of amusement, absent a finding that the States were implicated in the denial of such access.

In both cases, the Court reasoned that Congress' exercise of its Fourteenth Amendment enforcement powers must be directed at providing "modes of redress" for the "action of state officers, executive or judicial, when these are subversive of the fundamental rights specified in the amendment." *Civil Rights Cases*, 109 U.S. at 11; *accord Harris*, 106 U.S. at 639 ("[w]hen the state . . . has not . . . denied to any person within its jurisdiction the equal protection of the laws . . .

the [Fourteenth] amendment imposes no duty and confers no power upon congress").

Because the statutes at issue were "not predicated" upon "*any* supposed or apprehended violation of the fourteenth amendment on the part of the states", [they] did not withstand constitutional scrutiny the *Civil Rights Cases*, 109 U.S. at 14 (emphasis added); *Harris*, 106 U.S. at 635 (same); *see also Guest*, 383 U.S. at 782 (Brennan, J., concurring and dissenting in part) (noting that, per the *Civil Rights Cases*, Congress' Section 5 power is confined to the adoption of "appropriate legislation for correcting the effects of prohibited state law and state acts").

The VAWA civil rights remedy lacks the defects found in the legislation reviewed by the Court in *Harris* and the *Civil Rights Cases*. The provision in issue is firmly grounded upon a congressional finding of State constitutional violation, and was properly calculated by the legislature to serve as a means of remedying the consequences of that violation. As this Court stated in the *Civil Rights Cases*, remedial legislation enacted under Section 5 must "be directed to the correction of the[ ] operation and effect" of unconstitutional action by the States (109 U.S. at 11); and — in permitting victims of gender based violence who have not properly been protected by the States to exact a remedy from their attackers — Congress has acted with just such a constitutionally appropriate remedial purpose.

The lower court also relied heavily upon language in Harris and the *Civil Rights Cases* it read to indicate that the Fourteenth Amendment requires "an individualized showing that the State had unconstitutionally deprived the particular victim of a right protected by the Fourteenth Amendment" in order for the Congress to vindicate the victim's rights through the exercise of the Section 5 enforcement power. 169 F.3d at 866 (citing *Harris*, 106 U.S. at 639-40 and the *Civil Rights Cases*, 109 U.S. at 14). From this reading of the two Reconstruction-era precedents, the Fourth Circuit derived a corollary proposition that Congress "may regulate private conduct [under Section 5] pursuant [only] to a statute that applies [upon] an individualized showing of a State's violation of the Fourteenth Amendment." 169 F.3d at 869.

If such an individualized showing were in fact required, it would be amply satisfied on the facts alleged here. The plaintiff alleges that the administrators of the state college she attended left both defendants unpunished for a brutal gang rape. In any event, no such showing is required, for Congress need only find that the remedy is appropriate (*i.e.*, congruent and proportional) to a properly found State violation. That standard is eminently satisfied here.

The fact that the objects of the congressionally prescribed remedy are comprised of private persons, *i.e.*, the violent criminals that the States have failed to protect women against, is simply of no constitutional moment. This Court has never recognized a hidden limitation upon Congress' remedial power, reflected nowhere in the language of the Fourteenth Amendment, granting violent felons an immunity from the broad remedial reach of Section 5.*

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* Furthermore, this Court's governing precedents do not suggest that a "particularized showing" requirement — which the Fourth Circuit discerns in the *Civil Rights Cases* — has somehow survived solely with respect to congressional enforcement regulations reaching private conduct. To the contrary, as explained, the *Guest* decision — which the *Boerne* Court explicitly noted may have modified or superseded the holdings in *Harris* and the *Civil Rights Cases*, 521 U.S. at 525 — the Court assumed (without even seeing the need for analysis) that Congress had full authority to reach private conduct in remedying a constitutional violation.

POINT III

THE VIOLENCE AGAINST WOMEN ACT REFLECTS CONGRESS' DUE RESPECT FOR THE ROLE OF THE STATES IN OUR FEDERAL SYSTEM

The Fourteenth Amendment grants Congress broad authority to "intrude[ ] into legislative spheres of autonomy previously reserved to the States." *Boerne*, 521 U.S. at 517 (quotation omitted). In responding to the pervasive state constitutional violations against the victims of gender-based crimes, Congress demonstrated a salutary deference to the role that the Constitution reserves for the States in our federal system.

Congress chose not to displace, or engage in wholesale duplication of, state and local law enforcement responsibilities. Thus, while VAWA did include some supplementation of and enhancements to federal criminal laws, these new provisions were limited to reaching acts of domestic violence involving an interference with interstate travel. 18 U.S.C. §§ 2261-62.*

Nor did Congress force the States to make changes — or otherwise intercede — in their enforcement efforts. For example, Congress might have authorized the Justice Department and/or private persons to bring injunctive actions against the states to cure their violations. Congress also might have broadly conditioned the States' receipt of federal law-enforcement related funding on the achievement of prescribed changes in their law enforcement efforts with respect to crimes of violence against women.** Congress, however,

* The VAWA also increased penalties for federal rape convictions (18 U.S.C. §§ 2261-62), and altered the Federal Rules of Evidence to alleviate discrimination against women in the federal justice system.

** The statute contains the minimal requirement that states pay for rape exams in order to be entitled to funds to develop and strengthen law enforcement and prosecution strategies to combat crime against women. 42 U.S.C. § 3796gg-4.

rejected any such coercive remedies, and instead sought to provide the States with assistance in reforming their own law enforcement efforts.

Thus, VAWA provided a variety of grants and other assistance to aid the States. *See, e.g.*, 42 U.S.C. § 10401-02; 42 U.S.C. § 300w-10 (granting funds to support educational efforts aimed at reducing violent crimes against women); 42 U.S.C. § 3796gg (granting funds to develop and strengthen effective law enforcement and prosecution strategies to combat violent crimes against women). Furthermore, Congress granted the states funds to improve training in the area of domestic violence for judges, law enforcement and other governmental personnel with important responsibilities in these areas. 42 U.S.C § 13991-4002. Finally, Congress sought to grant further enforcement authority to the States in the area of domestic violence, this by enacting a provision requiring each state to grant full faith and credit to a protective order issued by the courts of another state. 18 U.S.C. § 2265.

Congress recognized, however, that reforming criminal justice systems so pervasively infected by equal protection violations will take time. Thus — in addition to assisting the States in their reform efforts — legislators reasonably concluded that there was a need to provide a remedy directly in favor of those who are most directly injured by the ongoing constitutional violations, *i.e.*, the victims of gender based violence. The VAWA civil rights remedy fills that need. Even here, however, Congress was careful not to intrude unduly upon State prerogatives. Significantly, the VAWA civil rights remedy is substantively grounded upon the States' — as well as federal — criminal laws, which are incorporated by reference into the statute's definition of "crime of violence". *See* 42 U.S.C. § 13981(d)(2). Further, the statute does not render illegal any conduct that was not already proscribed by federal or state law, and reserves a role for the State courts, providing a plaintiff with the option to choose to bring a VAWA civil action in a state court.

It is therefore unsurprising that a number of state law enforcement officials, including numerous state attorneys general, endorsed the VAWA civil rights remedy, recognizing that it was complementary of state law enforcement efforts. *See, e.g., Violence Against Women: Victims of the System*, Hearing before Senate Judiciary Committee, 102d Cong., 1st Sess., at 24-84 (April 9, 1991) (Attorneys General of Iowa and Illinois); *Crimes of Violence Motivated by Gender*, Hearing Before Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, 103d Congress, 1st Sess., at 31 (Nov. 15, 1993) (statement of National Association of Women Judges) (civil rights remedy would be "complementary" of state enforcement efforts; noting that provision avoided undue intrusion into "traditional state court functions").

Conclusion

The VAWA civil rights remedy — like the entirety of the Violence Against Women Act — reflects a measured attempt by Congress to address equal protection violations by the States in dispensing criminal justice, while respecting the States' autonomy and authority to administer their laws. This Court should sustain the statute as a proper exercise of the enforcement power granted Congress under Section 5 of the Fourteenth Amendment, and the decisions below should be reversed.

Respectfully submitted,

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Appendix A

The American Jewish Committee ("AJC"), a national organization of approximately 100,000 members and supporters, was founded in 1906 to protect the civil and religious rights of Jews. It is the conviction of the AJC that these rights will be secure only when the civil and religious rights of all Americans are equally secure. AJC participates as *amicus* here in support in Congress's use of its Fourteenth Amendment enforcement power to remedy constitutional deprivations caused by the States.

The Anti-Defamation League ("ADL"), one of the nation's oldest civil rights organizations, was founded in 1913 to promote good will among all races, ethnic groups, and religions. As set out in its charter, ADL's "ultimate purpose is to secure justice and fair treatment to all citizens alike and to put an end forever to unjust and unfair discrimination against and ridicule of any sect or body of citizens." To this end, ADL is committed to eradicating discrimination and violence against women and ensuring their full civil rights. ADL is convinced that the Violence Against Women Act is a constitutionally sound and appropriate response to a serious societal problem, and has previously filed *amicus* briefs in this case before the United States Court of Appeals for the Fourth Circuit and in other cases involving this statute.

Hadassah is the largest women's and the largest Jewish membership organization in the United States, with over 300,000 members nationwide. Founded in 1912, Hadassah is traditionally known for funding and maintaining health care institutions in Israel. However, Hadassah also has a proud history of protecting the rights of Jewish women and the Jewish community in the United States, whether by supporting equal rights, freedom of choice, access to health care, or working to eliminate all forms of violence against women. Hadassah has been a strong advocate for the Violence Against Women Act, which is crucial in helping to combat gender-based violence.

The National Council of Jewish Women, Inc. (NCJW), is a volunteer organization inspired by Jewish values, that works, through a program of research, education, advocacy and community service, to improve the quality of life for women, children and families and strives to ensure individual rights and freedoms for all. Founded in 1893, the NCJW has 90,000 members in over 500 communities nationwide. Given NCJW's early and active involvement in the passage of the Violence Against Women Act and NCJW's *National Resolutions*, which support "the elimination of, and protection from, all forms of harassment, violence and abuse against women everywhere," we join this brief.

People For the American Way Foundation ("People For") is a nonpartisan, education-oriented citizens' organization established to promote and protect civil and constitutional rights. Founded in 1980 by a group of religious, civic and educational leaders devoted to our nation's heritage of tolerance, pluralism and liberty, People For now has over 300,000 members nationwide. People For has been actively involved in efforts to combat discrimination and to ensure equal protection of the laws to all Americans through adoption and enforcement of strong civil rights laws, including civil rights laws enacted pursuant to Congress' powers under Section 5 of the Fourteenth Amendment. People For has joined in filing this *amicus* brief in order to vindicate the fundamental constitutional and civil rights principles at stake — namely, that Congress retains the power to secure the guarantees of equal protection of the laws to all Americans through appropriate legislation, including the legislation at issue in this case.

The Jewish Council for Public Affairs (JCPA), formerly the National Jewish Community Relations Advisory Council, is an umbrella organization of 13 national and 122 local Jewish public affairs and community relations agencies across the United States. Founded in 1944, the JCPA is committed to the dual mission of safeguarding the rights of Jews here and abroad and also promoting a just society for all Americans. To

that end, the JCPA has made the promotion of civil rights a major priority on its agenda. Among other accomplishments, the agency played a leading role in the founding of the Leadership Conference on Civil Rights, one of the most powerful voices in the continuing struggle to secure equality for all Americans. The JCPA has strongly supported passage of the Violence Against Women Act, as well as many other laws founded on Congressional authority under both the Commerce Clause and Section 5 of the 14th Amendment.

The Rutgers Women's Rights Litigation Center is dedicated to the equal protection of women under law and strongly supports the Violence Against Women Act and Congress' enactment thereof pursuant to its Fourteenth Amendment enforcement power.